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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,361	12/21/2001	Chang-An Wu	25885-703	8135
21971	7590	01/12/2004		
WILSON SONSINI GOODRICH & ROSATI 650 PAGE MILL ROAD PALO ALTO, CA 943041050				
			EXAMINER PRYOR, ALTON NATHANIEL	
			ART UNIT 1616	PAPER NUMBER

DATE MAILED: 01/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/026,361

**Applicant(s)**

WU ET AL.

**Examiner**

Alton N. Pryor

**Art Unit**

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 24 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 3,6-24 and 28-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,2,4,5 and 25-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10/24/03. 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Applicant's arguments filed 10/24/03 have been fully considered but they are not persuasive.

I. Rejection of claims 1,2,4,5,25-27 under 35 USC 103(a) as being obvious over Luo and Mamedov will be maintained for reasons on record and reasons as follows.

Applicant argues that Luo does not teach or suggest a synergistic combination of instant alkaloids, specifically a combination comprising both anabasine plus aloperine. Applicant argues that Luo merely compares the toxicities of alkaloids such as anabasine and aloperine against turnip aphids. Examiner argues that the mere fact that Luo teaches that both aloperine as well as anabasine are individually effective against turnip aphids is ample motivation for their combination. Examiner further argues that Applicant provides no data showing that a combination comprising anabasine and aloperine yields synergistic results.

Applicant refers Examiner to Tables VIII and IX for synergistic results to support the composition comprising aloperine and anabasine. Examiner agrees that Tables VIII provides patentable data for combination of plant extracts versus the individual extracts. However, Applicant claims are not a combination of instant extracts. Please clarify for Examiner: Is sample no. 5 the same in Tables VIII and IX?

Applicant argues that Mamedov teaches a composition comprising alkyl phenol-ethylene oxide which may be different from polyoxyethylated alkyl phenol as in instant claims. Applicant also argues there exist no suggestion of combining Mamedov with Luo to arrive at instant invention. Examiner argues that polyoxyethylated alkyl phenol

and alkyl phenol-ethylene oxide are chemically equivalent. Examiner argues there exist ample suggestion or motivation to combine Mamedov with Luo since both compositions are individually effective in controlling turnip aphids.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 703 308-4691. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 703-308-2927. The fax phone number for the organization where this application or proceeding is assigned is 703 305-3592.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1235.

  
ALTON N. PRYOR  
PRIMARY EXAMINER  
Alton Pryor  
Primary Examiner  
AU 1616